MEMORANDUM

To: Reporters and Editors
From: Dan Virkstis for Finance Committee Chairman Max Baucus (D-Mont.)
Jill Kozeny for Finance Committee Ranking Member Chuck Grassley (R-Iowa)
Re: Proposal for executive compensation legislation

Today, Finance Chairman Baucus and Ranking Member Grassley announced the core principles of a proposal to discourage excessive compensation by companies that have taken taxpayer funds as well as recoup payments made to executives at American International Group (AIG) last weekend, and to other executives at recipient institutions of funds from the Troubled Assets Relief (TARP) program.

The proposed measure is made up of the following components:

- Excise tax on excessive compensation
  - Provisions for Companies – company must pay a 35% excise tax on:
    - All retention bonuses
    - All other bonuses over $50,000
  - Provisions for Individuals – individual must pay a 35% excise tax on:
    - All retention bonuses
    - All other bonuses over $50,000
  - For foreign employees – if the excise tax cannot be collected from the individual through normal withholding, then the company is responsible for paying the employee's 35% excise tax amount
  - Provides regulatory safeguards that help to prevent companies from characterizing bonus payments as salaries to avoid the tax
  - Provisions apply to all TARP recipients of government funds as well as companies in which the government holds an equity interest, including Fannie Mae and Freddie Mac
  - Applies to all retention bonuses or other bonuses earned or paid beginning on 1/1/09 and continuing through the period during which the company retains TARP funds
- One million dollar cap on deferred compensation
  - There would be a $1 million limit on nonqualified deferred compensation, meaning that a taxpayer cannot defer more than $1 million in a 12 month period
    - $1 million limit would be indexed for inflation
    - If the $1 million limit is violated, compensation deferred under all nonqualified deferred compensation plans covering the taxpayer (including compensation deferred in previous years) would be taxable and such deferred amounts would be subject to a 20% penalty tax and interest payment
  - Interest and earnings on deferred compensation

    - Interest and earnings on compensation deferred during the 12 month period would not be counted against the $1 million limit, so long as the earnings are based on a “market rate” of return.
    - In general, a “market rate” of return would mean a predetermined actual investment (which may include book value and a reasonable fixed rate of return)
    - The Department of Treasury would be given the authority to define a “market rate” of return

- Provisions apply to all TARP recipients of government funds as well as companies in which the government holds an equity interest, including Fannie Mae and Freddie Mac

- Applies to all compensation deferred after date of enactment and continuing through the period during which the company retains TARP funds